BEFORE THE IDAHO BOARD OF TAX APPEALS

IN THE MATTER OF THE APPEAL OF PAUL HILBIG from the decision of the Board of Equalization of Ada County for tax year 2007.

) APPEAL NO. 07-A-2237) FINAL DECISION) AND ORDER

RESIDENTIAL PROPERTY APPEAL

THIS MATTER came for hearing on October 18, 2007 in Boise, Idaho before Hearing Officer Travis Vanlith. Board Members Lyle R. Cobbs, Linda S. Pike and David E. Kinghorn participated in this decision. Paul Hilbig did not appear. Appellant Sarah Hilbig appeared. Chief Deputy Appraiser Tim Tallman and Appraiser Paula Gossett appeared for Respondent Ada County. This appeal is taken from a decision of the Ada County Board of Equalization denying the protest of the valuation for taxing purposes of property described as Parcel No. R1311010150.

The issue on appeal is the market value of a residential property.

The decision of the Ada County Board of Equalization is reversed.

FINDINGS OF FACT

The subject property's assessed value is \$140,000. Appellant requests the market value be \$105,000. Appellant asserts an October 2006 agreement to purchase subject from Boesiger Development (the "Developer") for \$105,000 effectively set subject's market value.

Subject is an unimproved .43 acre triangle-shaped residential lot located in the Cascading Meadows II subdivision (the "subdivision") in West Boise, Idaho. To the west and south, subject is bordered by improved residential lots with older, lower-value residences. To the north and east, subject is bordered by unimproved residential lots.

The subdivision is located southwest of the Five Mile Road/McMillan Road intersection and includes nineteen (19) large lots. The largest lot has a remodeled residence built in 1969.

One (1) residence is occupied and four (4) are in the final stages of construction. The "target market" for the development is upper-value homes up to \$700,000.

In 2005, Appellant entered an option agreement with the Developer to purchase subject for \$105,000. Appellant paid the Developer a \$5,000 "down payment" as consideration for the purchase option. The record did not include a copy of the 2005 option agreement.

Appellant characterized the 2005 option agreement as a "reservation" because it did not bind either party "until the plat [was] recorded in late 2006." According to Appellant, the Developer was free to cancel the "reservation" and re-market the lot at a "higher price" any time before the plat was recorded.

After the plat was recorded, Appellant and the Developer signed a purchase agreement in October 2006 for \$105,000. Reportedly, the Developer "finally signed [subject] over" on October 16, 2006. The record indicates Appellant acquired possession of subject at that time. However, the sale did not close until March 26, 2007. The record did not include the October 2006 purchase agreement. The record did include the "Buyer's Final Closing Statement" dated March 26, 2007.

Appellant asserted the October 2006 purchase agreement "was a market transaction" because the exchange satisfied the generally accepted definition of market value. Appellant provided Multiple Listing Service (MLS) data from three (3) bare land sales in West Boise to establish subject's market value at \$105,000. The sales occurred between January and August 2006 and were located within 8.9 miles of subject. Lots ranged from .40 to .46 acres. Sale prices ranged from \$230,217 to \$262,500, or \$5 to \$6 per square foot. For comparison, subject's assessed value was \$140,000, or \$7 per square foot. Subject actually sold for \$105,000, or \$6 per square foot. See Table 1 below:

Table 1. Appellant's Comparable Sales

Comparable Property	Amount	Acre s	Square Feet	Amount Per Acre	Amount Per Sq. Ft.	Distance (Mi)	Closing/ Assesse d Date
Comparable 1	\$105,900	0.46	20,038	\$230,217	\$5	8.9	02/07/06
Comparable 2	\$105,000	0.40	17,424	\$262,500	\$6	2.3	01/30/06
Comparable 3	\$110,000	0.45	19,602	\$244,444	\$6	6.6	08/03/06
Subject (Sale)	\$105,000	0.43	18,731	\$244,186	\$6		03/26/07
Subject (Assessed)	\$140,000	0.43	18,731	\$325,581	\$7		01/01/07

The County Appraiser generally dismissed Appellant's comparable sales. The Appraiser also stated the October 2006 purchase agreement that closed in March 2007, was not a "market sale because it occurred in 2007 and January 1, 2007 [was] our assessment date."

The Appraiser dismissed Appellant's Comparable 1 based on "the area of town it was [located] in," but did not elaborate on this statement. The Appraiser also pointed out a discrepancy in the MLS data on this sale. The MLS data stated the lot was ".46 acres" and also stated the lot measured "140 x 108 feet", or .57 acres. However, it was conceded that "a lot of times there are mistakes in the MLS."

Although Appellant's Comparable 2 was located in the same section as subject, the Appraiser dismissed it because the area was "very depressed" and had "a lot of mobile homes" and "older transient types of houses." According to the Appraiser, the neighborhood was a "tough place."

The Appraiser dismissed Appellant's Comparable 3 because it was located "way off Lake Hazel and Five Mile" amidst "very low income housing built back in the seventies." This lot was located approximately 6.6 miles from subject. The MLS described the lot as "empty pasture on the west side of 10604 La Grange [Rd.]." The MLS also stated the lot was a "large buildable lot

in Southwest Boise" with "no backyard neighbors" and "a working well." Maps of the area showed a large vacant lot to the west of 10604 La Grange Road, surrounded by large residential lots. The area appeared semi-agricultural with several newer subdivisions within one mile of the comparable property. Although residences in the immediate area appeared older, they did not appear to be low income housing.

The Appraiser stated she spoke with the Developer "to determine the circumstances of [subject's] sale." It was discovered several lots were "put under option" in early 2005. Some options were released and others continued through closing. The Appraiser asserted the options from 2005 were not representative of the 2006 market.

The Appraiser presented two (2) MLS listings showing Appellant listed subject for sale on July 26, 2007 for \$179,900, which Appellant later reduced to \$139,900. The Appraiser pointed out subject's revised asking price was "approximately the 2006 assessed value, which is ten months after the assessment in a declining market." The Appraiser stated the listings represented "what a reasonable intelligent person would think [the lot would] sell for."

Appellant challenged the relevance of subject's 2007 MLS listings. It was contended subject's asking price was irrelevant. It was also asserted the Developer could have backed-out of the option contract before October 16, 2006 and re-listed subject at a higher asking price. Appellant argued the Developer's willingness to complete the transaction at the original asking price effectively set subject's actual market value at \$105,000.

Respondent provided data from four (4) bare land sales to establish subject's market value. The County maintained they were the best available sales for comparison to subject. The Appraiser characterized these sales as "competing in-fill" lots. The sales occurred between June 2006 and October 2007. The October 2007 sale was located in the subdivision and was

configured similar to subject (i.e., triangle-shaped lot). However, this lot was encompassed by several mature trees and upper-value residences. The other three (3) sales were located in Meridian, Idaho within 3 miles of subject. Lots ranged from .27 to .47 acres. Sale prices ranged from \$150,000 to \$200,000, or \$8 to \$17 per square foot. See Table 2 below:

Table 2. Respondent's Comparable Sales

Comparable Property	Amount	Acre s	Square Feet	Amount Per Acre	Amount Per Sq. Ft.	Distance (Mi)	Closing/ Assesse d Date
Comparable 1	\$200,000	0.27	11,674	\$746,269	\$17	2	06/30/06
Comparable 2	\$195,000	0.36	15,725	\$540,166	\$12	3	11/07/06
Comparable 3	\$150,000	0.33	14,418	\$453,172	\$10	3	06/01/06
Comparable 4	\$152,500	0.47	20,255	\$327,957	\$8	0	10/17/07
Subject (Sale)	\$105,000	0.43	18,731	\$244,186	\$6		03/26/07
Subject (Assessed)	\$140,000	0.43	18,731	\$325,581	\$7		01/01/07

The Appraiser asserted Comparable 2 most closely resembled subject. This sale was characterized as an "in-fill" lot in which "the houses being constructed [were] very similar in design and quality to [homes] being built in the subject development." This lot was located on a private cul-de-sac in a higher-valued area of Meridian. The subdivision was located down the street from a new grade school, two (2) new charter high schools, and a new alternative middle school. This lot was .36 acres and sold for \$195,000 in November 2006.

The Appraiser provided a map showing "2007 Assessed Land Values" in Cascading Meadows II. Lot sizes ranged from .23 to .73 acres. The map indicated subject had the same assessed value (\$140,000 per lot) as three (3) other lots in the subdivision. The assessed values of the other sixteen (16) lots ranged from \$120,000 to \$160,000.

CONCLUSIONS OF LAW

This Board's goal in its hearings is the acquisition of sufficient, accurate evidence to support a determination of fair market value. This Board, giving full opportunity for all arguments and having considered all testimony and documentary evidence submitted by the parties in support of their respective positions, hereby enters the following:

Idaho Code provides that "All property within the jurisdiction of this state, not expressly exempted, is subject to appraisal, assessment and property taxation." I.C. § 63-203.

Idaho Code further directs that "rules promulgated by the State Tax Commission shall require each assessor to find market value for assessment purposes of all property." I.C. § 63-208(1).

For taxation purposes, Idaho requires that property be valued at market value. I.C. § 63-201(10). The Idaho Administrative Code defines market value as "the most probable amount" for which a property would exchange hands. This "most probable amount" is arrived at when a transaction (or multiple transactions) satisfies certain statutory elements of a market exchange: First, the seller must be "knowledgeable and willing" and acting "under no compulsion to sell." Second, the buyer must be "informed" and "capable" and acting "under no compulsion to buy." Third, the market exposure must allow "a reasonable time" to consummate the sale. Fourth, the buyer must substantiate the exchange "by a reasonable down or full cash payment." IDAPA 35.01.03.217.01, see also I.C. § 63-201(10).

An arm's-length sale of a property is often the best evidence of market value. Appellant and the Developer entered an option agreement in 2005. The testimony indicated neither party was bound until the plat was recorded in October 2006. The facts showed both Appellant and the Developer had approximately one (1) year to vacate the original agreement or renegotiate

terms. The facts also showed Appellant "substantiated" the exchange in 2005 by a reasonable "down payment" of \$5,000. According to Appellant, this amount was fully refundable by Developer until the subject plat was recorded. The Developer made no attempt to refund the down payment. Soon after the plat was recorded, the parties signed a purchase agreement transferring ownership to Appellant. Appellant assumed "possession" of subject at that time. There was no evidence of a modification after Appellant and the Developer signed the purchase agreement. Although the sale did not close until March 2007, the crux of the exchange occurred in October 2006. The agreement substantially conformed with the statutory elements of a market value exchange. Thus, the Board finds \$105,000 represents "the most probable amount" for which subject would have exchange hands in late 2006.

Respondent's data from four (4) bare land sales was relevant, but was not the best evidence presented. These properties were characterized as "competing in-fill" lots. Comparable 4 was an October 2007 sale in the same subdivision as subject. The subdivision was a new development situated among older, well-established developments. This conforms with the generally accepted definition of an "in-fill development" (i.e., an empty lot within the constraints of a built-up area). Although Comparable 4 was configured similar to subject (i.e., triangle-shaped lot), it was 1,525 square feet larger than subject. Unlike subject, this lot was surrounded by mature trees and upper-value residences. The lot sold for \$152,500, or \$8 per square foot, at the same time Appellant was asking \$139,900 for subject. This supports Appellant's claim Comparable 4 was more marketable than subject. The Board notes Respondent relied on a 2007 sale to establish subject's market value, but challenged Appellant's use of subject's sale, which also closed during 2007.

Respondent's three (3) other comparable sales (Comparables 1, 2, and 3) occurred during

2006. Although Respondent's comparable lots were smaller than subject (26% smaller, on average), they sold for substantially higher prices. The Board finds these properties are superior to subject and do not accurately reflect subject's market value.

Appellant provided MLS data from three (3) 2006 bare land sales in West Boise. All three (3) properties were located in older, more established areas of West Boise and were bona fide "in-fill" lots. These lots appeared less marketable than Respondent's Meridian comparable sales. Although differences between subject and these properties existed, the lot sizes were similar to subject (within 7%). The Board finds these properties are more similar to subject and supportive of subject's sale price.

Although subject's sale did not close by the January 1, 2007 assessment date, the exchange substantively occurred before that date. This transaction is the best evidence presented of subject's market value as of January 1, 2007. Therefore, the Board finds Appellant's claim for relief is supported by a preponderance of the evidence. The decision of the Ada County Board of Equalization is reversed.

FINAL ORDER

In accordance with the foregoing Final Decision, IT IS ORDERED that the decision of the Ada County Board of Equalization concerning the subject parcel be, and the same hereby is, reversed lowering the assessed value to \$105,000.

IT IS FURTHER ORDERED that any taxes which have been paid in excess of those determined to have been due be refunded or applied against other *ad valorem* taxes due from Appellant.

MAILED January 31, 2008